98th CONGRESS HEARINGS: SUBCOMMITTEE ON RULES OF THE HOUSE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON RULES OF THE HOUSE

OF THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

PART 1

H.R. 3231: EXPORT ADMINISTRATION AMENDMENTS ACT OF 1983

WEDNESDAY, JULY 20, 1983

AND

H.R. 1314: REORGANIZATION ACT AMENDMENTS OF 1984

THURSDAY, MARCH 22, 1984

PART 2

H.R. 4447: EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

WEDNESDAY, JUNE 20, 1984

Part 1 of 2 parts

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HEARING AND MARKUP—H.R. 3231 EXPORT ADMINISTRATION AMENDMENTS ACT OF 1983

WEDNESDAY, JULY 20, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RULES OF THE HOUSE,
COMMITTEE ON RULES,
Washington, DC.

The subcommittee met, pursuant to call, at 5 p.m., in room H-313, the Capitol, Hon. John Joseph Moakley (chairman of the subcommittee) presiding.

Present: Representatives Moakley, Beilenson, Bonior, and Hall.

OPENING STATEMENT OF HON. JOHN JOSEPH MOAKLEY, CHAIRMAN OF THE SUBCOMMITTEE ON RULES OF THE HOUSE

Mr. MOAKLEY. The subcommittee will come to order.

This afternoon the Subcommittee on Rules will consider H.R. 3231, the Export Administration Amendments Act of 1983. The bill extends and authorizes funds to implement the Export Administration Act of 1979. It also revises procedures for administering controls on U.S. exports under the act for national security, foreign policy, and short supply purposes. Title III of the bill establishes the U.S. Policy Toward South Africa Act of 1983.

Both the Export Administration Act of 1979 and H.R. 3231 contain congressional review provisions which provide for a legislative veto of certain Presidential actions by passage of a concurrent or joint resolution. The subcommittee will explore legislative vetoes in the context of the act and the constitutional issues raised by the recent Supreme Court rulings invalidating legislative vetoes which bypass the constitutionally prescribed lawmaking process of bicameral consideration and presentation to the President for his signature and veto.

Additionally, the Committee on Rules specifically received referral of section 113(c) of H.R. 3131, which sets forth the scope of the authority of the President to impose foreign policy controls subject to authorization by enactment of a joint resolution.

It is important to note that the Committee on Foreign Affairs reported this bill on June 22, one day before the Supreme Court declared the legislative veto unconstitutional in the case of *INS* v. *Chadha* and 1 week prior to the summary decisions in the subsequent rulings on the vetoes applicable to the Federal Energy Regulatory Commission and the Federal Trade Commission which reaffirmed the Court's broad ruling in *Chadha*.

Given the history of this subcommittee's interest in legislative veto and its impact on this institution, it would appear that this is an appropriate forum to reexamine the congressional review provisions of this bill.

As you are aware, the appendix to Justice White's dissent specifically lists two provisions of the Export Administration Act of 1979: Section 7(d) relating to prohibitions on exports of domestically produced crude oil, and section 7(g)(3), relating to prohibition or curtailment of agricultural commodities, as containing legislative vetoes which fall within the scope of the court's ruling.

Title III of H.R. 3231 establishes the U.S. Policy Toward South Africa Act of 1983 and contains two congressional review mechanisms which provide for legislative veto through passage of concurrent resolutions of disappoval for certain Presidential waivers of labor standards and other provisions.

Although the concurrent resolution procedures set forth in this act would require action by both Houses of Congress, concurrent resolutions are traditionally not sent to the President for his signature or veto and are not enacted into law. Thus, this procedure does not follow the constitutionally prescribed lawmaking process of bicameral consideration and presentation to the President.

Another issue of primary concern is the severability of the legislative veto, that is, whether Congress would have delegated the authority without the congressional review mechanism. This remains to be determined, if challenged, in the over 300 statutes containing legislative vetoes.

However, in view of the broad reach of the Supreme Court ruling, I think it is our responsibility as legislators to consider the constitutional issues raised in connection with any proposed legislation and develop legislative remedies wherever possible. Congressional review provisions of enactments subsequent to *Chadha* warrant close scrutiny by this committee before they are referred to the House for consideration.

I would point out that during a recent Rules Committee hearing on a bill which contained a questionable legislative veto, the members made it clear that the committee could not in all propriety report a rule on a bill which contains language that is clearly unconstitutional.

I would hope that until an institutional remedy is developed, the Committee on Rules and this subcommittee, whenever possible, would take a critical look at such provisions to determine whether modifications are necessary. Although I will provide wide latitude in the testimony today, I do intend to attempt to observe the limitations of the referral and the jurisdiction of this committee.

I would like to thank all of you for being with us this afternoon and look forward to hearing your testimony.

The first witness that we will hear is the Honorable Stephen Solarz of the Foreign Affairs Committee, because Stephen was the first one in the room waiting patiently.

STATEMENT OF HON. STEPHEN J. SOLARZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SOLARZ. Thank you very much, Mr. Chairman.

I will be very brief. I have a prepared statement which I would hope you can include in the record.

Mr. MOAKLEY. Without objection.

Mr. SOLARZ. Let me briefly summarize.

Title III of the Export Administration Act, which relates to our policy toward South Africa, has two legislative vetoes in it which were included prior to the *Chadha* decision. In light of the concerns which you have expressed, I hope that you could make in order an amendment, or handle in some other way a change in those provisions. I would specifically suggest is that we eliminate the legislative vetoes, and provide instead that in title III, whenever we give the President the right to issue a waiver from the provisions contained in title III, that the waiver not become effective unless and until the Congress adopts a joint resolution approving the waiver. This it seems to me would solve the constitutional problems created by the *Chadha* decision.

Mr. MOAKLEY. Aren't we doing almost the same thing?

Mr. SOLARZ. Well, it is very different, because a joint resolution is subject to a Presidential veto.

Mr. MOAKLEY. You are talking about the joint resolution?

Mr. SOLARZ. Right, not a concurrent resolution, and the two Presidential waivers involved relate first to the section of title III which would require all American firms doing business in South Africa to comply with the Fair Employment Code of Conduct.

We give the President the right to waive those requirements with respect to a particular firm or corporation, if he believes the national interests require us to do so, and under the proposal I am putting forward, that waiver would not take effect unless and until the Congress adopted a joint resolution approving the waiver.

There are two other sections of title III. One would prohibit all bank loans to the Government of South Africa, not the private sector but the Government, except for loans for the purpose of housing, health, or education programs that are available on a nondiscriminatory basis to all South Africans.

The other section would prohibit the importation of the krugerrand, into the United States. The krugerrand which is a South African gold minted coin, from which South Africa earns roughly $300 million a year in foreign exchange, according to the latest figures. Title III gives the President the right to waive those provisions if he comes to the conclusion that South Africa is making substantial progress toward the elimination of apartheid, and toward the establishment of a political, social, and economic system in which all the people of that country can participate on an equal basis.

Once again, that waiver would only become effective if the President requested, and the Congress adopted a joint resolution approving the waiver.

I don't know how you would want to proceed with this suggestion, whether you would make an amendment in order by me, or the chairman, or by the committee, but let me say, as the author of title III, I would have no problem with this kind of alteration, which I believe would meet the technical and procedural concerns which you expressed.

[Prepared statement of Hon. Solarz follows:]

PREPARED STATEMENT OF HON. STEPHEN J. SOLARZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to appear before the Subcommittee to address your concerns about the need to have all legislation considered by the House meet the standard recently defined by the Supreme Court's decision in the Chadha case.

Title III of the Export Administration Act, which I authored, is cosponsored by 76 Members of the House including 2 Members of the Subcommittee. It would modify our relations with South Africa by: (1) establishing a set of legally enforceable fair employment standards for American firms operating in South Africa with more than 20 employees; (2) banning U.S. bank loans to the South African Government, except for loans made for educational, housing, or health facilities which are available on a totally nondiscriminatory basis in areas open to all population groups; (3) prohibiting the importation into the United States of the krugerrand or any other gold coin minted or offered for sale by the South African Government. These steps are necessary to distance the United States from the outrageous policy of apartheid, and to indicate that we are willing to back up our opposition to apartheid with deeds as well as words.

Because we had envisioned that serious national security concerns could necessitate a waiver of the mandatory fair employment standards contained in the legislation, a Presidential waiver, overturnable by a concurrent resolution of disapproval, had been incorporated in Title III of the legislation.

A similar waiver had been constructed to enable the President to lift the prohibitions on the importation of krugerrands or the issuance of bank loans to the government of South Africa when the President determined that the government of South Africa had made substantial progress toward the full participation of all the people of South Africa in the social, political, and economic life in that country and toward an end to discrimination based on race or ethnic origin.

In light of the Chadha decision, I now propose to offer an amendment to Section 316 and Section 324 that would require the Congress to pass a joint resolution of approval before waivers requested by the President could take effect.

This new standard would, I believe, conform with the recent Court decision, and also protect the interests of the Congress in ensuring that these modifications of our relations with South Africa would be lifted only for serious reasons.

The President retains his right to request waivers of any of these three provisions affecting our relations with South Africa. Requests for waivers of these provisions could be grouped together, and thus facilitate Congress' consideration of the joint resolution of approval needed to implement the waivers.

I hope that Members of the Rules Committee will support the amendment I am proposing which would substitute a joint resolution of approval for the concurrent resolution of disapproval now contained in the version of Title III reported out of the Foreign Affairs Committee.

AMENDMENTS TO H.R. 3231, AS REPORTED BY THE COMMITTEE ON FOREIGN AFFAIRS

Page 60, line 12, strike out the period and all that follows through line 24 and insert in lieu thereof "if the President publishes each waiver in the Federal Register and submits each waiver and the justification for the waiver to the Congress and if the Congress enacts a joint resolution approving the waiver.".

Page 64, line 11, strike out the period and all that follows through line 21 and insert in lieu thereof ", if the President submits any such determination, and the basis for the determination, to the Congress, and if the Congress enacts a joint resolution approving the determination.".

Page 64, lines 5 and 6, strike out "periods of not more than one year each" and insert in lieu thereof "a period of not more than one year".

Mr. MOAKLEY. I think of course any joint resolution signed by the President has all the effects of law.

Mr. SOLARZ. Right.

Mr. MOAKLEY. And meets the constitutional tests, and that is what most members of this subcommittee were talking about, before the legislative veto was declared unconstitutional. So I think that is positively one way to remedy the situation.

Do you have any questions Mr. Beilenson.

Mr. BEILENSON. No, sir, I don't, Mr. Chairman.

Mr. MOAKLEY. Mr. Bonior?

Mr. BONIOR. No.

Mr. MOAKLEY. Does anybody have any questions?

There are no questions.

Mr. SOLARZ. Thank you very much.

Mr. MOAKLEY. Was it worth the wait?

Mr. SOLARZ. It was a scintillating and exciting experience. I look forward to a return, Mr. Chairman. Thank you very much.

Mr. MOAKLEY. Thank you very much for your suggestions.

Our next witness is the Honorable Don Bonker of the Committee on Foreign Affairs.

Don.

STATEMENT OF HON. DON BONKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. BONKER. Thank you, Mr. Chairman, for the opportunity to take up this matter with you and your subcommittee.

You had contacted me on an earlier occasion about language in the Export Administration Act reauthorization bill that at that time was before the Foreign Affairs Committee, and I instructed my staff to———

Mr. MOAKLEY. Because we had a feeling, a premonition that this was going to happen and we wanted to save you from writing unconstitutional laws.

Mr. BONKER. It was a good premonition, but I think at that time we were also discussing whether it was compatible with House procedures as well.

Mr. MOAKLEY. Right.

Mr. BONKER. I think that was the principal concern.

You have raised I believe three different issues in the Export Administration Amendments Act, one of which refers to title III, the South Africa provision that my colleague, Mr. Solarz, has already addressed.

The second reference is to section 113(c) of the bill, which subjects Presidential imposition of certain foreign policy export controls to authorization by joint resolution.

The Export Administration Act of 1979 provides to the President authority to impose export controls for foreign policy, national security, or short domestic supply reasons. We have attempted to rewrite that statute in such a way that we can make it easier for U.S. exports to compete on an equal footing, and that has necessarily involved rather intricate procedures between the executive and the legislative branches.

Whenever we limit the President's authority to use foreign policy controls in the future, we certainly run counter to Executive prerogative to use economic sanctions as a means of carrying out certain foreign policy objectives. So this language has been carefully crafted so that we give the President some authority, without giving him unlimited authority, which could be abused. We have learned now under two Presidents that foreign policy controls, once in the case of a grain embargo and again in the export restrictions on components for the Soviet gas pipeline, have proved ineffective,

and were ultimately lifted, with the only punishment being to U.S. suppliers.

An earlier draft, H.R. 2761, reported to the Foreign Affairs Committee by the subcommittee, contained detailed procedures for consideration by the full House of a joint resolution providing additional authority to the President. In response to the concerns that you raised about compatibility with House Rules, much of that procedural language was removed from a clean bill we introduced for full committee markup. During the markup, however, several of those provisions found their way back into the bill.

If the President wished to impose foreign policy controls under the provisions of this bill, he wouldn't be able to do so extraterritorially or on existing contracts. We wanted to give him some opportunity, if he wants, to come to the Congress for additional authority, if the foreign policy circumstances warranted. We provide that the House Foreign Affairs Committee and the Senate Banking Committee, which have jurisdiction over the Export Administration Act, would have 30 days in which to consider the President's request, after which the committees are subject to an automatic discharge.

We restored this language because we felt that such a request from the President would merit prompt consideration. If the foreign policy considerations at the time were serious, and he came to the Congress for authority to interfere with existing contracts or to impose controls extraterritorially, Congress should take that up in an expeditious fashion.

I don't know how your committee wants to deal with the question of whether by statute we ought to designate the standing committees involved in such a process. We certainly wouldn't want to inhibit our Speaker from assigning the bill wherever he feels that it ought to go, but in this case the committees named are the committees of jurisdiction, and there is nothing in the bill that would prohibit the Speaker from referring the same bill to any other committee. So we hope that we can work this out so that we achieve the expedited procedures we want without disrupting the House procedures.

The third question you raised concerns the provision known as the Wolpe-McKinney amendment, which restricts exports of Alaskan North Slope crude oil. This issue again involves a rather delicate procedure of the two branches of Government, and I think in order to be compatible with the Supreme Court ruling, we will have to offer language for the bill to clean up what we have now in the 1979 act.

So I have an amendment, Mr. Chairman, that hopefully will put the provision into conformity with the Supreme Court's decision. The amendment simply changes the requirement for a concurrent resolution of approval to a joint resolution of approval, which of course then would go to the President. The amendment does not deviate much from the existing language in the act. It clarifies that the President's report to the Congress should be made as a matter of findings and recommendations rather than a report. We feel that this is a little more explicit and relevant to what we want to accomplish.

We do retain the 60-day time period in which Congress must act to approve exports, thereby reaffirming the procedure that has been in effect since 1973. The amendment also retains the consumer benefits and national interest criteria, therefore reaffirming the importance Congress attaches to the decision to export Alaskan crude.

Mr. Chairman, that concludes my statement.

[Mr. Bonker's prepared statement follows:]

PREPARED STATEMENT OF HON. DON BONKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman, thank you for the invitation to discuss with this Subcommittee certain provisions in H.R. 3231, a bill to reauthorize the Export Administration Act of 1979.

I will first speak to section 113(c) of the bill, which subjects Presidential imposition of retroactive (abrogating existing contracts) or extraterritorial foreign policy export controls to authorization by joint resolution. H.R. 2761, the Export Administration Act reauthorization bill reported to the Committee on Foreign Affairs by the Subcommittee on International Economic Policy and Trade, which I have the honor to chair, contained detailed procedures for consideration by the full House of such a joint resolution. In response to concerns raised informally by the Committee on Rules, much of the procedural language was deleted from a clean bill, H.R. 2971, which I introduced for full Committee markup. During Committee markup, however, the provision requiring referral to the Committee on Foreign Affairs and automatic discharge after 30 days was restored to the bill, and appears before you in the Committee's clean bill, H.R. 3231. We appreciate the fact that the automatic discharge provision does affect the Rules of the House in this specific situation, and we realize that referral of measures introduced in the House is the prerogative of the Speaker. However, in order to maintain our bipartisan compromise on the authority of the President to impose foreign policy export controls, it was necessary to assure that the Committee and the full House would have an opportunity to consider expeditiously a request from the President for such authority. We also note that the provision does not prevent referral to other Committees of the House, and that it merely confirms the existing jurisdiction of the Committee on Foreign Affairs over export controls.

Mr. Chairman, I would now like to comment briefly on the provisions of the 1979 Act and of H.R. 3231 relevant to the Supreme Court's *Chadha* decision. These provisions are contained in section 7(d) of the Act, concerning exports of Alaskan North Slope crude oil; section 119 of H.R. 3231, which amends section 7(g) of the Act relating to agricultural commodity exports; and sections 316(a) and 324 of Title III of the bill, concerning Presidential waviers of provisions of the U.S. Policy Towards South Africa Act.

Section 7(d) of the 1979 Act provides that Alaskan North Slope crude oil may not be exported unless the President finds and reports to Congress that exports will clearly serve the national interest and will benefit American consumers, and the Congress, within 60 days, adopts a concurrent resolution approving such exports. During House Floor consideration of H.R. 3231, I intend to offer an amendment, a copy of which is attached, which will bring this requirement into conformity with the Supreme Court decision. My amendment deviates as little as possible from the existing statutory language, and is in the nature of a technical amendment specifically responding to the *Chadha* decision. Simply put, my amendment would require that the Congress adopt a joint resolution of approval in order for Alaskan crude oil to be exported.

Section 119 of H.R. 3231 amends section 7(g) of the Act. Section 7(g) presently gives the Congress 30 days in which to adopt a concurrent resolution disapproving a Presidential decision to curtail or to prohibit exports of agricultural commodities. Section 119 of the bill would require the Congress to act within 60 days through a joint resolution of approval in order for a Presidential decision prohibiting or curtailing agricultural exports to continue in effect.

Mr. Chairman, I will now defer to my distinguished colleague, Representative Solarz, the sponsor of Title III, who is here to comment on sections 316(a) and 324 of H.R. 3231.

Thank you again for the opportunity to appear before this Subcommittee. I will be pleased to respond to any questions.

AMENDMENT TO H.R. 3231, AS REPORTED BY THE COMMITTEE ON FOREIGN AFFAIRS

Page 36, strike out lines 12 and 13 and insert in lieu thereof the following:

SEC. 117. Section 7(d) of the Act (50 U.S.C. App. 2406(d)) is amended—

(1) in paragraph (1) by striking out "unless" and all that follows through "met" and inserting in lieu thereof "subject to paragraph (2) of this subsection";

(2) in paragraph (2)(A) by striking out "makes and publishes" and inserting in lieu thereof "so recommends to the Congress after making and publishing";

(3) in paragraph (2)(B)—

(A) by striking out "reports such findings" and inserting in lieu thereof "includes such findings in his recommendation"; and

(B) by striking out "thereafter" and all that follows through the end of the sentence and inserting in lieu thereof "after receiving that recommendation, agrees to a joint resolution approving such exports on the basis of those findings which is thereafter enacted into law."; and

(4) by adding at the end thereof the following:

Page 60, line 12, strike out the period and all that follows through line 24 and insert in lieu thereof "if the President publishes each waiver in the Federal Register and submits each waiver and the justification for the waiver to the Congress and if the Congress enacts a joint resolution approving the waiver.".

Page 64, line 11, strike out the period and all that follows through line 21 and insert in lieu thereof ", if the President submits any such determination, and the basis for the determination, to the Congress, and if the Congress enacts a joint resolution approving the determination.".

Page 64, lines 5 and 6, strike out "periods of not more than one year each" and insert in lieu thereof "a period of not more than one year".

Mr. MOAKLEY. I think there is widespread agreement that the amendments you propose do clarify section 7(d) and will probably resolve any doubts raised by the charter decision regarding the constitutionality issue.

I would like to be clear regarding the severability of section 7(d), in the highly unlikely event that the amended section 7(d)(2)(b) turns out to be invalid.

Is my understanding correct, in your opinion, that if the committee knew that Congress could not be affirmatively involved in deciding when Alaskan oil should be exported, then the committee would have flatly prohibited exports rather than permit the President alone to decide when exports should be permitted?

Mr. BONKER. Mr. Chairman, that is correct.

The ability of Congress to decide when the criteria, which are in section 7, had been met was essential to the committee's willingness to permit the export of Alaskan oil under any circumstances.

Mr. MOAKLEY. That is one thing that we want, because I think that is the problem that is going to be facing the courts when some of these are brought up there. That is, the severability and what the intent of the legislation was at the time that it was passed, whether it would have given the President that right had they not had the second bite of the apple.

Mr. BONKER. I don't envy your job. I think it is going to call for a basic rewrite of many of our statutes. I know the Foreign Affairs Committee is presently considering the impact of the Supreme Court decision on the War Powers Act and on the sale of arms.

Mr. MOAKLEY. I think the only way you can test the War Powers Act is, if we invaded a country we would have to appoint an ambassador-at-large to that country so he could test the act. So I don't think we are going to have to test that one.

Mr. BONKER. Unfortunately, we may have a test like that before too long.

Mr. MOAKLEY. Mr. Beilenson, do you have any questions of the distinguished gentleman?

Mr. BEILENSON. I wish I did, Mr. Chairman, but you have asked the one thing I was going to ask.

Mr. BONIOR. You have asked the one thing I was going to ask.

Mr. MOAKLEY. What about you, Mr. Hall?

Mr. HALL. I don't have any questions.

Mr. MOAKLEY. I am glad I didn't ask your question too.

Thank you very much. It has been very enlightening. As I say, I agree with you. I think the committee does have a huge task, and I am sure we are going to be meeting with many committees that have jurisdiction over some of these things that contain legislative vetoes to see how we go.

It is my feeling it does not need a rewrite of all of the some 300 bills that have some sort of legislative veto but, rather, these will be tested case-by-case. I am sure many of them will never be tested because of the way that they are set up.

Thank you very much.

Mr. BONKER. Thank you, Mr. Chairman and members.

Mr. MOAKLEY. Now we will hear from the Honorable Don Young of the Committee on Interior and Insular Affairs.

Don, you are probably the only Congressman from a single member State that most people would swear has 15 Congressmen. You are a fierce fighter.

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. Thank you.

Mr. Chairman and members of the committee, I have a written statement to submit to the committee at this time.

Mr. MOAKLEY. Without objection, the entire statement will be included.

Mr. YOUNG. Much has been covered by the previous two witnesses. My main interest you can guess. It is the export of the Alaskan oil.

Presently we have a concurrent resolution and the gentleman from Washington plans to offer an amendment for a joint resolution with the signature of the President. I think that is an additional burden that is unfair to the State of Alaska, and I think he was very honest in his statement. He is trying to prohibit at any time the export of Alaskan oil to any of the Pacific rim nations.

Just for a little background, I was the sponsor of the original amendment that prohibited the export of oil, because at that time it was thought by Members of Congress, the Governor, the State legislature, the Congress, the Senate, and the President, that there would be a transportation system in place. It would either pass through the Puget Sound area which is the one we supported, to Chicago and to the Midwest and the Eastern States, or it would be one from California going through, et cetera.

We thought in the event of a national emergency the President could at that time export the oil and we could concur with the approval of the Congress.

Subsequently, two Governors have stopped the two transportation lines. My State now delivers 1.6 million barrels, one-fifth of the domestic production, to the United States. It is being, frankly I think, punished.

The market is now receiving our Alaskan oil via the coast of California, Washington, and Oregon, Mexico to Panama, in a very volatile area. There it is offloaded from 225,000 deadweight ton ships through a pipeline which we pay the Panamanian Government rent for, reloaded on 90-ton deadweight ships and transferred to the east coast and the Texas area to be redistributed. It is costing the State, the figure is estimated, $296 million a year to my constituents.

I can get into all of the other ramifications but I think we are the only State right now that has this prohibitive clause on royalty oil, and I have argued that that should be the prerogative of the States, to deliver it to the Near East market.

Unfortunately, we do not have a distribution system in place at this time. That is a detriment to this country, and I would urge the committee very honestly, I would say the best course of action of the subcommittee would be to recommend a complete removal of the legislative veto requirements of the bill, and the bill would retain the requirements of stringent Presidential findings as it does now before exports would be authorized. It could no longer contain veto provisions which could be unconstitutional and would remove any uncertainty over the constitutionality of the law.

I am not a lawyer, Mr. Chairman, but I do know right now that this is not a fair situation to the State of Alaska. Much has been said about the vast amounts of money involved here. Yet if we were able to export our royalty oil it would give some more money to our Treasury, but more than that, we do have international implications with the Pacific rim nations. They are very much wanting to have the opportunity to have a politically stable climate for the purchasing of oil in the closest market, and I think we have to keep that under consideration, that the countries, Japan, Korea, Taiwan, yes, the Philippines and possibly even China do want into the market of the Alaskan oil, and I think we will have a responsibility.

I think the President must have that latitude. I disagree with the gentleman from Washington, but I understand where he is coming from. I understand his area. I understand the shipbuilding business. I understand that whole program, but in all fairness and for international implications I would urge you to either remove all legislative veto requirements in this bill or at least do not adopt what he is proposing in the joint resolution signed by the President.

[Mr. Young's prepared statement follows:]

PREPARED STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Thank you, Mr. Chairman. I appreciate being given this opportunity to appear before this subcommittee as you consider possible changes regarding the procedureal requirements in the reauthorization of the Export Administration Act.

As currently drafted, H.R. 3231 continues the requirements of a concurrent resolution of approval of Presidential findings authorizing the export of Alaska North Slope crude oil. Oil may not be exported unless and until the Congress approves of

stringent Presidential findings in favor of export. This requirement of congressional approval has been by means of a concurrent resolution of approval.

It is my understanding that the subcommittee is now considering tightening the restrictions on export by requiring not only that Congress approve of the export, but that the approval be by means of a joint resolution, which would require the signature of the President. The basis for this change is the argument that the current law be unconstitutional under the restrictions on the use of legislative veto procedures recently announced by the Supreme Court in the *Chadha* case. I urge the subcommittee not to adopt any further restrictions on oil export in the form of this procedural change.

I believe that changing the approval requirement to a joint resolution will not cure the possible constitutional defect in the law. As the members of this subcommittee well know, there is a great deal of uncertainty over the extent to which legislative veto procedures may not be used. At a minimum, the Court has found constitutional defects in a single House veto procedure. However, most scholars believe the Court's doctrine reaches far beyond this point to cover two House approval requirements. Also, many experts believe that the Court has invalidated any law which requires any congressional action subsequent to the action of the President in order for the executive branch action to take effect.

Simply stated, I believe that adding a joint resolution requirement to this bill will serve only to further cloud the uncertainty over the law. The bill, as drafted, contains a form of legislative veto. Changing this veto procedure to a joint resolution will alter the veto procedure in form but not substance. Congressional action after action by the President will still be required for the President's action to take effect. Merely requiring a Presidential signature on the resolution of approval does not change the basic constitutional problem that the Congress is retaining the authority to veto a Presidential action.

For these reasons, I urge the subcommittee to refuse to adopt changes in the bill which will only serve to perpetuate the uncertainty over the legality of the legislative veto.

In addition, it must be noted that altering the legislative veto provision to a joint resolution requirement imposes further restrictions on executive action. A joint resolution requirement would add one more layer of restrictions on exports—that of a Presidential signature on the resolution of approval—this further restriction represents both a substantive change and one which does not correct constitutional problems with the legislative veto.

I believe the best course of action for this subcommittee would be to remove entirely the legislative veto requirements of the bill. The bill would then retain the requirement of stringent Presidential findings before exports could be authorized and would no longer contain legislative veto provisions which may be unconstitutional. This action would remove any uncertainty over the constitutionality of the law.

Thank you, Mr. Chairman. I welcome any questions you or the members of the subcommittee may have.

Mr. MOAKLEY. It was as a result of the oil embargo in 1973 that we put this strict language in there, because of the oil shortages. We were afraid that the country would be without the use of the Alaska oil, if we allowed it to go overseas just pellmell.

Mr. YOUNG. You are absolutely correct, but the problem is we didn't follow through. We had court suits and actions by Mr. Brown of California, Mr. Spellman of Washington. We have had legislative battles. We have had environmental lawsuits, 51 lawsuits in California. Consequently, the oil now goes through a very volatile region.

We had a debate on the floor yesterday in secret session. That is not a safe thing. It is not a safe thing. I am not arguing right now that we should be shipping oil from Alaska to the Pacific rim nations—if we had another transportation system, but it is not in place. It is not going to be in place, and to my knowledge we are the only State in the Union that has this prohibitive clause on royalty oil.

I may be incorrect, but that is something that the Governor is looking at very closely right now. It is a detriment to my constituents. It is wrong to deprive them of the economic goals or gains we could gain by shipping to Pacific rim nations. But more than that, I think we have to look at the international implications, with the Pacific rim nations, and the role that this Nation and the State of Alaska plays with that exchange of a fossil fuel to the closest market.

If we had two pipelines, which I have supported, and the gasline, which I have supported, we could deliver about 5 million barrels a day to the U.S. market. We wouldn't have to have any OPEC oil, but I can't get this body to act on it, Mr. Chairman. I can't get this body to even think about it.

Now I am faced, as the Representative of the people of Alaska, with a situation where they are losing approximately $5 a barrel on the oil. That should be going back to them, $5 a barrel. I think that is unfair. Thank you.

Mr. MOAKLEY. Any questions of the gentleman from Alaska?

Mr. Beilenson.

Mr. BEILENSON. I think, sir, although I am not sure I recall correctly when we last voted on this, how I last voted on it, I think I am on your side on the substantive issue but I am not sure that I understand the argument you make on the procedural issue here.

At the bottom of the first page of your prepared testimony you "urge the subcommittee not to adopt any further restrictions on oil exports in the form of this procedural change."

Mr. YOUNG. Joint resolution.

Mr. BEILENSON. Right. As I understand it, the only additional problem there would be the signature of the President that is required.

Mr. YOUNG. That is right.

Mr. BEILENSON. Then you say the better thing from your point of view is not to have any kind of legislative veto provision at all, remove it entirely, because of its possible unconstitutionality.

Mr. YOUNG. Let the President have the findings that he is required to do now.

Mr. BEILENSON. He would have to make those findings in order for the exports to occur?

Mr. YOUNG. That is right.

Mr. BEILENSON. My question to you, if I may, is that if all you are concerned about in the first part is the fact that the President would have to sign it, how can you then argue that you ought to have it so that only the President makes those findings? You are concerned about the Congress not approving it?

Mr. YOUNG. That is right.

I doubt right now—there are 234 signatures on the McKinney bill—that I could get the Congress to agree to it. It is a matter of reality. I recognize that.

I am arguing primarily, I have differences of opinion within my own State. They want a total lifting. That is opposed by the oil companies who have invested a tremendous amount of money into domestic shipments, which I support. But to deprive the State of their right to sell their oil to the highest bidder, and we are not talking about a tremendous amount of oil——

Mr. BEILENSON. I understand that, but you are basically saying now that we have the opportunity to get the Congress out of the picture, let us keep them out and leave only the President in.

Mr. YOUNG. That is right. That is my suggestion. I know that may not be an ideal approach, but that is what I am suggesting.

Mr. MOAKLEY. Mr. Bonior?

Mr. Hall?

Mr. HALL. Thank you very much. You have made some good points. It is something that we will have to look at very closely, because I am sure that it is not severable, so if the legislative veto is found unconstitutional, as it has been, I am sure the President doesn't have the right that we gave him in the legislation originally.

Mr. YOUNG. It is a very complex issue. I just don't want us to add anything more to it. Then let's see what happens as we go through this whole mish mash of all those good things that we thought we were doing correctly in the past years, and the Supreme Court has thrown them out.

Mr. MOAKLEY. We know what is going to happen.

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. MOAKLEY. Mr. Wolpe has a letter which we will ask unanimous consent to submit for the record, supporting Don Bonker, and also Congressman Roth has one opposing section 113.

[The letters referred to follow:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 20, 1983.

Hon. JOE MOAKLEY,
Subcommittee on Rules of the House,
H152 Capitol.

DEAR JOE: I understand that your Subcommittee is meeting this afternoon to consider the Export Administration Act and the amendments thereto included in H.R. 3231. As you know, the Foreign Affairs Committee reported out this bill the day before the Supreme Court ruling on the unconstitutionality of the legislative veto was announced. Congressman Bonker, as Chairman of the International Economic Policy and Trade Subcommittee, is planning to offer a technical amendment to H.R. 3231 today in the effort to bring H.R. 3231 in line with the Supreme Court ruling. As a co-author of H.R. 1197, legislation urging the extension of restrictions on the export of Alaskan oil that are included in the Export Administration Act and are affected by the Court ruling, I would like to express my support for Congressman Bonker's amendment and to urge the Subcommittee to accept this technical revision.

Thank you for your consideration of this issue.

Sincerely,

HOWARD WOLPE,
Member of Congress.

U.S. HOUSE OF REPRESENTATIVES,
July 20, 1983.

Hon. JOE MOAKLEY,
Chairman, Subcommittee on Rules of the House,
Washington, DC.

DEAR MR. CHAIRMAN: I am writing to express my deep concerns regarding section 113 (c) of H.R. 3231 to amend the Export Administration Act of 1979. This provision is of concern to me for several reasons and I urge the Subcommittee to recommend its deletion from H.R. 3231.

My first concern arises from the general thrust of the provision which is designed to insure swift procedural consideration of the joint resolution authorizing the Presi-

dent to impose extraterritorial export controls. Section 113 (c) contains a 30 day discharge provision, but this does not insure timely consideration of the Joint Resolution by the House. I have severe doubts that the amendment can technically or practically achieve what it purports to accomplish.

Second, although I am not intimately familiar with your Subcommittee's basic views toward such expedited procedures as captured in Section 113 (c), it seems inconsistent, however, to approve a provision which alters the Rules of the House, but will not in practice provide for expedited consideration of a joint resolution throughout the legislative process.

Third, in light of the Supreme Court's recent decision regarding the legislative veto, Section 113 (c) may be of dubious constitutionality. Either the President has the authority circumscribed by Section 113 (c) or it is not within his powers.

Fourth, this provision which is designed to provide expedited procedures may be irrelevant to the foreign policy process. Presidential actions regarding foreign policy are effective as a result of their substantive content as well as their timeliness. Once Congress begins to debate whether or not the President should act, the effectiveness of foreign policy export controls are significantly diminished. I do not believe the Committee on Rules should endorse a procedural process which could adversely affect the conduct of U.S. foreign policy.

For these reasons Mr. Chairman, I urge the Subcommittee to recommend deletion of Section 113 in its entirety from H.R. 3231.

Sincerely,

TOBY ROTH,
Member of Congress.

Mr. MOAKLEY. Are there any further questions?

Thank you very much for being very patient.

Mr. MOAKLEY. The gentleman from California.

Mr. BEILENSON. I move to report H.R. 3231 to the full committee favorably and without amendment.

Mr. MOAKLEY. On the amendment. All those in favor say aye; opposed no.

The ayes have it. H.R. 3231 is reported to the full committee without amendments.

[Whereupon, at 5:30 p.m., the subcommittee adjourned.]

HEARING AND MARKUP—H.R. 1314 REORGANIZATION ACT AMENDMENTS OF 1984

THURSDAY, MARCH 22, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RULES OF THE HOUSE,
COMMITTEE ON RULES,
Washington, DC.

The subcommittee met at 10:30 a.m., in room H-313, the Capitol, Hon. John Joseph Moakley (chairman of the subcommittee) presiding.

Present: Representatives Moakley, Beilenson, Bonior, and Taylor.

OPENING STATEMENT OF HON. JOHN JOSEPH MOAKLEY, CHAIRMAN OF THE SUBCOMMITTEE ON RULES OF THE HOUSE

Mr. MOAKLEY. The subcommittee will come to order.

We are meeting today to hold subcommittee hearings on the Reorganization Act Amendments, H.R. 1314. The bill has been reported by the Committee on Government Operations and is before us under the terms of a joint referral.

We are pleased to have with us today the distinguished chairman of the Committee on Government Operations, Hon. Jack Brooks, and that committee's able ranking minority member, Hon. Frank Horton. Mr. Horton and Mr. Brooks are the sponsors of this legislation.

As many of you may know, the Reorganization Act is the oldest legislative veto and dates from 1932, and since that time, Congress has passed a total of 16 laws giving the President reorganization authority. But it is a power Congress has delegated very, very cautiously. Most of these laws have imposed some statutory limitation on the authority, and all of them have been subject to sunsets which assured that Congress would periodically review the authority. And, except for an emergency version which ran only for the duration of World War II, each of these laws has retained a one-House veto.

In addition to providing authority for the President to reorganize executive agencies through a process less cumbersome than normal legislation, they also have generally provided special rules of the House and Senate to expedite consideration of resolutions to disapprove reorganizations, in order to assure that Congress would vote on a reorganization, if there was any opposition.

Of course, this approach has now been invalidated by the recent Supreme Court decision in *Immigration and Naturalization Service* v. *Chadha*. However, the authors of H.R. 1314, anticipating the Su-

preme Court decision, have proposed that this process be changed to approval through enactment of joint resolutions.

I should point out that this change is a very significant one, in a number of respects, and imposes special responsibilities on the Committee on Rules, in the exercise of its original jurisdiction.

Under the changes proposed by H.R. 1314, sections 901 through 907, which are solely within the jurisdiction of the Government Operations Committee, state in effect that the President may propose reorganizations and that Congress may effect them through enactment of a law. Although these provisions do define the form in which all of the paperwork will be written and processed, they are fairly minor, and these sections, in the new form, are really little more than a restatement of the Constitution.

Therefore, under the new form, section 908 through section 912, which are solely within the jurisdiction of the Rules Committee, become the primary substance of the Reorganization Act. These provisions operate as a highly expedited closed rule on what would now be reorganization bills.

When the Congress had to act on a disapproval resolution by a date certain to prevent a plan from becoming the functional equivalent of law, I think we had rather little choice with respect to the expedited procedures. But in the new context, forced by the *Chadha* ruling, however, we must look at the rules for joint resolutions enacting reorganization plans in a whole new light. And I have serious reservations about a number of these provisions.

I accept that Congress was limited to a "yes" or "no" response on a concurrent resolution. But, now that we have to pass a law to implement a reorganization, I object to Congress surrendering its traditional right to perfect that legislation. Under these rules, the Committee on Government Operations and the House itself are prohibited from amending the joint resolution. And I do not think that the House could be persuaded to adopt a closed rule on a bill prior to it being reported from one of its own committees. So I am puzzled at the idea of a closed rule on a whole class of legislation, which has not yet been written and when it is, will be written in the bureaucracy of OMB.

Also, now that we are compelled to act legislatively and no time deadline exists, I have reservations about other provisions of the rules.

One, since 1910, the Committee on Rules has been categorically barred from depriving the minority of its right to a motion to recommit on any bill, yet the Reorganization Act extinguishes that right for a whole class of legislation.

Two, in my years on this committee, I have never voted for a 10-hour rule, and I am doubtful that any reorganization resolution warrants that allocation of time.

Three, I am also concerned both about automatic discharge and provisions which allow any single member to compel a vote.

In addition, I am not entirely sure that there is any need for special rules at all. During the period since the existing law expired, the need to do reorganizations has not gone away. In March of last year, OMB decided that it would like to transfer responsibility for publishing the Catalog of Federal Domestic Assistance down to GSA and submitted a request for legislation to the House and

Senate committees, and legislation based on their request was introduced.

In reviewing the plan, however, both the House and Senate committees agreed that the GSA was in a good position to take over the actual assembly and printing of the catalog. But both committees felt that OMB should retain ultimate responsibility and oversight of this function. Legislation was then introduced to implement the reorganization with that modification and then it was signed into law in November.

Now, under the rules contained in the Reorganization Act, it would have been necessary, in the House and Senate, at subcommittee and full committee, and even on the floor, to vote down an unamendable joint resolution of approval. And only after all these requirements under the rules in the Reorganization Act were disposed of could Congress finally begin to work on the bill it managed to pass without any special rules.

After having said all that, I am proposing that this bill be reported to full committee. I am taking this action because of my high regard for the sponsors of the bill and because I recognize that the bill has almost overtaken its own sunset date while pending in the subcommittee.

But when this renewal of the Reorganization Act expires at the end of this year, I would strongly urge this committee and the Committee on Government Operations to take a long hard look at the act, in the full light of the implications of the *Chadha* decision and to consider that the whole purpose of the law may have passed and that it may be time to just let it die.

Having said that, it is my pleasure to welcome for testimony our illustrious Chairman, Jack Brooks, and also Frank Horton.

STATEMENTS OF HON. JACK BROOKS, CHAIRMAN, COMMITTEE ON GOVERNMENT OPERATIONS, ACCOMPANIED BY HON. FRANK HORTON, RANKING MINORITY MEMBER, COMMITTEE ON GOVERNMENT OPERATIONS

Mr. BROOKS. I will open up if I may, and I want to first say that I am impressed by your own careful research into all the problems that impinge on the act and your very fine dissertation on it. And, you know, we are going to lots of hearings, and most of the time the opening statement is a little dull. I found this one fascinating.

Mr. MOAKLEY. Especially the second to the last paragraph, I am sure.

Mr. BROOKS. Mr. Chairman, we are really indeed grateful to you for calling this hearing to consider H.R. 1314, the Reorganization Act Amendments of 1983.

The bill would extend the authority delegated to the President in the Reorganization Act of 1977 to make limited organizational changes in executive branch agencies through a process which provides for expedited consideration by the Congress of reorganization plans submitted to it by the President. Reorganization authority has proved to be a sometimes valuable tool in promoting greater efficiency in executive branch operations.

As reported by the Committee on Government Operations last May, H.R. 1314 amends the 1977 Reorganization Act to clarify the

extent of the authority being delegated by Congress. The bill would prohibit the President from renaming an executive department through a reorganization plan or creating a new agency outside of an already existing executive department or independent agency. In addition, the President would be required to include a section on implementation in the message accompanying such plan. The bill also extends the timeframe for consideration or reorganization plans, the time during which the President can amend the proposal or withdraw a plan, and the time during which committee action on the plan is required.

Mr. Chairman, the major change in reorganization authority, and the one which concerns your committee most directly in its relationship to the rules of the House, is the procedure by which reorganization plans would become effective. The 1977 act provided that a reorganization plan would become effective unless either House of Congress passed within a fixed amount of time a resolution disapproving the plan, a somewhat cumbersome procedure. H.R. 1314 provides that a plan will take effect only if, within a fixed amount of time, both Houses pass a joint resolution approving the plan. This joint resolution would also require the President's signature in order for the plan to go into effect.

Now, this procedural change, this one, grew out of the concern that the previous one-House veto procedure was of dubious constitutionality in light of the Supreme Court's *Chadha* legislative veto decision with which the rules is fully cognizant and is now making a study of its effect within all the government agencies, a very wise and, I think, useful effort.

Now, during the 97th Congress, while the committee was considering a bill to extend reorganization authority, I wrote to the Attorney General asking for clarification of the administration's position on legislative veto, particularly on language contained in the bill then under consideration extending reorganization authority. The administration reply suggested that any expedited procedure for congressional review of reorganization plans be revised to provide for congressional action by means of a resolution to be adopted by both Houses and submitted to the President for his approval or disapproval. This is the procedure which was incorporated into H.R. 1314 in the 98th Congress.

I believe that the bill currently before your subcommittee is consistent with the Supreme Court's *Chadha* decision on legislative veto. That decision specified that any legislative action must be approved by both Houses of Congress and be presented to the President for his approval. These two basic constitutional requirements are met by H.R. 1314's provisions for a joint resolution of approval of a reorganization plan.

With this changed procedure incorporated into H.R. 1314, I hope that the legislation will receive prompt consideration by your subcommittee, by the full Rules Committee, and by the House.

I would add one additional thought. There is considerable advantage to getting this more responsible reorganization plan on the books now. The last plans have always been haggled over, fought over by both Democratic and Republican administrations who wanted to have more authority for the President, understandably. And I have fought that and tried to restrain it.

And we have finally, I believe, hammered out what is the best language we can have for a reorganization bill. And while this one will expire in December, at least we will have the advantage of having put this, what I consider to be wise language, on the books. And next year if the administration, whoever it is, decides they want that, we will take a look at it again.

At least we have this much accomplished. Beyond that, if—when we have a consideration of it, I would be very much in favor of having your, Mr. Chairman, Mr. Moakley's best views on it. We will go over it then.

I think right now we ought to put this one in place. It is the best we have been able to fashion. It meets with considerable reluctance in the administration's viewpoint. The OMB is not always too acquiescent to our in provements on their suggestions. But, in this instance, I think they have finally agreed, they did last year, because I think they reached a conclusion that if they did not agree, nothing would be done. And it is a good way to reach then accord.

You just take the safety off and aim it right at their head, and ask them would you like to do it this way? And they often agree.

So, with that conclusion, I would rest my case.

[Mr. Brooks' prepared statement follows:]

PREPARED STATEMENT OF HON. JACK BROOKS, CHAIRMAN, COMMITTEE ON GOVERNMENT OPERATIONS

Mr. Chairman, I want to thank you for calling this hearing to consider H.R. 1314, the Reorganization Act Amendments of 1983. This bill would extend the authority delegated to the President in the Reorganization Act of 1977 to make limited organizational changes in executive branch agencies through a process which provides for expedited consideration by the Congress of reorganization plans submitted to it by the President. Reorganization authority has proved to be a valuable tool in promoting greater efficiency in executive branch operations.

As reported by the Committee on Government Operations last May, H.R. 1314 amends the 1977 Reorganization Act to clarify the extent of the authority being delegated by Congress. The bill would prohibit the President from renaming an executive department through a reorganization plan or creating a new agency outside of an already existing executive department or independent agency. In addition, the President would be required to include a section on implementation in the message accompanying such plan. The bill also extends the time-frame for consideration of reorganization plans, the time during which the President can amend the proposal or withdraw a plan, and the time during which committee action on a plan is required.

Mr. Chairman, the major change in reorganization authority, and the one which concerns your committee most directly in its relationship to the rules of the House, is the procedure by which reorganization plans would become effective. The 1977 Act provided that a reorganization plan would become effective unless either House of Congress passed within a fixed amount of time a resolution disapproving the plan. H.R. 1314 provides that a plan will take effect only if, within a fixed amount of time, both Houses pass a joint resolution approving the plan. This joint resolution would also require the President's signature in order for the plan to go into effect.

This procedural change grew out of the concern that the previous one-House veto procedure was of dubious constitutionality in light of the Supreme Court's *Chadha* legislative veto decision. During the 97th Congress, while the committee was considering a bill to extend reorganization authority, I wrote to the Attorney General asking for clarification of the administration's position on legislative veto and particularly on language contained in the bill then under consideration extending reorganization authority. The administration's reply suggested that any expedited procedure for congressional review of reorganization plans be revised to provide for congressional action by means of a resolution to be adopted by both Houses and submitted to the President for his approval or disapproval. This is the procedure which was incorporated into H.R. 1314 in the 98th Congress.

Mr. Chairman, I believe that the bill currently before your subcommittee is consistent with the Supreme Court's *Chadha* decision on legislative veto. That decision specified that any legislative action must be approved by both Houses of Congress and be presented to the President for his approval. These two basic constitutional requirements are met by H.R. 1314's provision for a joint resolution of approval of a reorganization plan.

Mr. Chairman, with this changed procedure incorporated into H.R. 1314, I hope that this legislation will receive prompt consideration by your subcommittee, by the full Rules Committee, and by the House.

Thank you.

Mr. MOAKLEY. Mr. Chairman, I agree with you. I think that statement I made is a perspective, other reorganization bills will come after that. I think you interpret the Supreme Court decision like many of us have. And the only way you can do it now is by a joint resolution passed by both branches and presented ultimately to the President for his signature. And anything else will be fraught with potential constitutional violations.

So I commend the chairman in his statement and also his actions up to now.

Mr. Beilenson?

Mr. BEILENSON. I do not have any questions.

Mr. MOAKLEY. Mr. Bonior?

Mr. BONIOR. No questions.

Mr. MOAKLEY. I think you have answered all the committee's questions, Mr. Chairman. As usual, you have anticipated our very, very deep searching of your subcommittee.

Mr. BROOKS. After that opening statement, I thought I had better get prepared.

Mr. HORTON. Mr. Chairman, I have a short statement I would just like to put in the record.

Mr. MOAKLEY. Without objection, it will be inserted in the record.

[Mr. Horton's prepared statement follows:]

PREPARED STATEMENT OF HON. FRANK HORTON, RANKING MINORITY MEMBER, COMMITTEE ON GOVERNMENT OPERATIONS

Mr. Chairman and Members of the Subcommittee: I come before you this morning to seek your support for H.R. 1314, Reorganization Act Amendments.

For nearly 50 years, the Reorganization Act has permitted the President to force expedited Congressional action on his plans for transferring the responsibility for performing governmental functions from one agency to another. The Act has thus ensured that proposals for important organizational changes receive our attention—and they have usually received our acceptance, as well. The Act has been a powerful tool in making the executive branch of government more efficient and more responsive to the President.

The bill before you today would renew that authority, which has lain dormant for almost three years, and reshape it to make the President's power more constrained by the Congress than it was in previous versions of the law. In the past, a reorganization plan became effective unless either House of Congress passed, within a fixed time period, a resolution disapproving the plan. Under H.R. 1314, a plan could become effective only if both Houses passed, again within a fixed time, a resolution approving it, and the resolution was signed by the President. The Congressional veto provision would be replaced by a guarantee that legislation would be considered promptly.

I am sure that all of you are following the progress of the Rules Committee's excellent inquiry into the legislative veto, and consequently understand why this change is necessary. The Supreme Court ruled last June, in a case called *Immigration and Naturalization Service* v. *Chadha,* that such a veto violates the Constitution's command that all legislation be passed by both Houses of Congress and signed by the President in order to become law. H.R. 1314 replaces the procedure in previ-

ous Reorganization Acts with one which clearly meets the Supreme Court's tests of constitutionality.

I should tell you, though, Mr. Chairman, that the Government Operations Committee did not write this bill in reaction to the Court's decision in *Chadha*. This legislation was reported by our Committee more than a month before that decision was rendered. We came to the conclusion on our own that the procedure in this bill is appropriate.

H.R. 1314 also makes several lesser changes in the Reorganization Act. It precludes plans from creating new agencies which are not components of existing agencies, or from renaming an existing department; extends the time for consideration of a plan from 60 to 90 days; and requires the President to submit with each plan a description of how the plan will be implemented.

The Administration is in full support of this bill. In fact, the principal changes between this measure and previous versions of the Act was specifically recommended by the Administration. The one problem that the White House saw with the bill as introduced, which had to do with documentation to be provided the Congress, was eliminated in the Government Operations subcommittee markup by an amendment offered by Mr. Brooks.

Mr. Chairman, this bill enjoys broad support among not only Government Operations Republicans and Democrats, but also the Administration. Given such strong support, I sincerely hope that we can move the bill forward to enactment.

Mr. HORTON. And I certainly want to commend you also on your views. I have been very much concerned about this reorganization authority. We have worked in it, as Jack has indicated, over the years that I have been in the House. We have not had it for the last years.

I agree with you and with the chairman that we do need this type of legislation. And I think it would be a good idea to put it on the books. I do not know if they have any reorganization plans that they propose to send up before the end of this year.

Mr. MOAKLEY. Maybe the chairman can bail me out.

I understand that the administration has some reorganization plans that have to do with border inspection activities that might be coming forward.

Mr. HORTON. That I have heard about. I do not know if that is true or not.

Mr. BROOKS. Well, I believe that we can face that under this bill. We have a straight veto in the House, in the Senate. It has got to be proposed.

And it gives them some assurance that we will not arbitrarily bottle it up. We are not trying to do that. And if we do not like it, we will rip it all over the House.

Mr. HORTON. And I might say that Chairman Brooks has been concerned about this problem long before the *Chadha* decision. And, as a matter of fact, it is my decision that this bill was granted before that decision.

Mr. MOAKLEY. Yes, I commend your chairman for that. Because I think he has the foresight that not a majority of the Members of the House had as far as that *Chadha* decision coming down. I for one felt that the legislative veto in its generic form was unconstitutional. But I was shot down by many scholarly Harvard professors.

Mr. HORTON. We have a problem with people coming on the floor. They work for the plan, they had to vote no. And it was very cumbersome, as the chairman said. So this bill intends to try to resolve that problem.

But in connection with your statement with regard to the future, there has to be some way that we can provide the administration,

Republican or Democratic, because there is always the need to make some revisions and reorganization without having to go through the formal proceedings like we do when we create a new department, a new agency, and that sort of thing. It is important, and it gives us a handle on what they are doing.

And the bureaucracy—we are interested in eliminating the bureaucracy and centralizing it and doing the best job we can as far as the taxpayers are concerned. And so I think it is important for administrations to have some type of reorganization plan so that they can expeditiously move these types of things through.

Mr. MOAKLEY. I concur. But I wonder if we need to put in all the expedited procedures. Because now it is a joint resolution of approval as opposed to one of disapproval where disapproval could just wait it out and kill it. But there is no way this is going to die no matter how long you wait it out.

So since it is going to be handled like a regular piece of legislation, I do not see how one person has the right to call it up on the floor of the House, and it has to be done in so many days, and it could be handled.

Mr. HORTON. Well, one of the day's requirements I think is helpful. It gets the administration to move expeditiously. And if you have some time limit, it has been the experience under the reorganization that that gets it motivated to move quickly.

Now, our problem in the past—I know it is in most administrations—we have had a problem of having them implement the plan so we know what they are going to do. And that is one of the things we have included in this bill.

Mr. BROOKS. Pardon me.

Mr. MOAKLEY. Mr. Chairman?

Mr. BROOKS. You know the previous system, the plan went into effect unless you had this.

Mr. MOAKLEY. That is right.

Mr. BROOKS. Now, this eliminates that, this requires a positive action on the part of both Houses, which is much more an open system of giving Congress an opportunity to act, and yet still gives the President an opportunity to put a package before the Congress if he really has a hard idea that he wants to pass.

Mr. MOAKLEY. That is why I do not feel the expedited procedures are really necessary. Because before, unless they were expedited, they still would die for lack of action.

Mr. BROOKS. No. Before we go, it would be in effect.

Mr. MOAKLEY. Sorry. What I meant is that if we just delay the thing, it would go into effect.

Now, we have to take affirmative action. So I do not see why we need all the expedited procedures that were intended through motions of disapproval.

Mr. BROOKS. The simple reasons is that all the Presidents have always felt that they wanted to have a shot sometime at laying out a proposal, reorganization plan, that would affect the agencies. And they also have the fear—and this has been true under Democrats and Republicans—that their proposal of stray legislation would be amended and botched up, and their honest presentation would never see the light of day in its original form. So this gives them a shot, that is all it does.

Mr. HORTON. As a matter of fact, the best advantage of that is some years ago there was a proposal set up by, I think it was, the Nixon administration. And I remember at the time they were talking about putting seven pigs in four pens, and they wanted to reorganize and create four departments and put everything under it. Well, the problem with those kinds of things is it is very hard when you do anything like that to get the Congress to move.

And then, as Jack was saying, these reorganization plans are not the biggest things in the world.

Mr. MOAKLEY. But I agree with you, and I agree with the chairman, that after this, new reorganization plans would probably take a much closer look at the rules that were attendant to these reorganization matters of the President.

Any questions?

[No response.]

Mr. MOAKLEY. Thank you very much.

If we have one more person, Mr. Chairman, we will vote your bill out to the full committee.

Mr. BROOKS. I just do want to thank you again for your courtesy.

Mr. MOAKLEY. It is always a pleasure to have you.

The subcommittee will stand in recess until we have enough members to vote this matter up.

[A brief recess was taken.]

Mr. MOAKLEY. The subcommittee will now come to order.

The Chair will be in receipt of a motion.

Mr. BEILENSON. Mr. Chairman.

Mr. MOAKLEY. Mr. Beilenson.

Mr. BEILENSON. Thank you, Mr. Chairman.

There are three technical amendments that are in each member's folder. And I would ask unanimous consent.

Mr. MOAKLEY. Without objection.

Mr. BEILENSON. I move the bill to the full committee.

Mr. MOAKLEY. Is there any discussion?

No discussion.

All in favor say aye.

[Chorus of ayes.]

Mr. MOAKLEY. Opposed?

[No response.]

Mr. MOAKLEY. Let the record show that in attendance were Congressman Beilenson, Congressman Bonior, Congressman Taylor, and Congressman Moakley.

The subcommittee will now be adjourned.

[Whereupon, at 11:20 a.m., the subcommittee adjourned, subject to the call of the Chair.]

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